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(o) *Loan location*. A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank*—(1) *Definition*. *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.160 billion. *Intermediate small bank* means a small bank with assets of at least \$290 million as of December 31 of both of the prior two calendar years and less than \$1.160 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment*. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the FDIC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in “loans to small businesses” as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in “loans to small farms” as de-

fined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with § 345.25(b).

[60 FR 22201, May 4, 1995, as amended at 60 FR 66050, Dec. 20, 1995; 61 FR 21364, May 10, 1996; 69 FR 41187, July 8, 2004; 70 FR 44269, Aug. 2, 2005; 71 FR 78337, Dec. 29, 2006; 72 FR 72573, Dec. 21, 2007; 73 FR 78155, Dec. 22, 2008; 74 FR 68664, Dec. 29, 2009; 75 FR 79286, Dec. 20, 2010; 75 FR 82219, Dec. 30, 2010; 76 FR 79531, Dec. 22, 2011]

Subpart B—Standards for Assessing Performance

SOURCE: 60 FR 22201, May 4, 1995, unless otherwise noted.

§ 345.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards*. The FDIC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests*. The FDIC applies the lending, investment, and service tests, as provided in §§ 345.22 through 345.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks*. The FDIC applies the community development test for a wholesale or limited purpose bank, as provided in § 345.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards*. The FDIC applies the small bank performance standards as provided in § 345.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 345.42.

(4) *Strategic plan.* The FDIC evaluates the performance of a bank under a strategic plan if the bank submits, and the FDIC approves, a strategic plan as provided in § 345.27.

(b) *Performance context.* The FDIC applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in § 345.43, and any written comments about the bank's CRA performance submitted to the bank or the FDIC; and

(7) Any other information deemed relevant by the FDIC.

(c) *Assigned ratings.* The FDIC assigns to a bank one of the following four ratings pursuant to § 345.28 and Appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance" as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the FDIC reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank

to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the FDIC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the FDIC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the FDIC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which

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the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

[60 FR 22201, May 4, 1995, as amended at 75 FR 61045, Oct. 4, 2010]

§ 345.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the FDIC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, home equity, other secured, and other unsecured loans. In addition, at a bank's option, the FDIC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 345.42(c)(1), the data for each category that the bank elects to have the FDIC evaluate.

(2) The FDIC considers originations and purchases of loans. The FDIC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the FDIC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The FDIC will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The FDIC evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the FDIC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 345.42.

(2) The FDIC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and